Reserved Judgment

IN THE HIGH COURT OF UTTARANCHAL AT NAINITAL

Second Appeal No. 19 of 2003

Chandrabhan S/o Sri Parmanand,
R/o Village Rhosnabad,
Pargana Jwalapur,
Tehsil & District Haridwar

…… Appellant

Versus

Jagdesh Prashad Chauhan,
S/o Shri Chandra Pal Singh,
R/o C-103, Sri Ram Nagar Colony,
Jwalapur,
Tehsil & District Haridwar.

…….. Respondent

Mr. Arvind Kumar Sharma, learned counsel for the appellant.
Mr. Lok pal Singh, learned counsel for respondent.

Hon'ble Prafulla C. Pant, J.

This second appeal, preferred under Section 100 of the Code of Civil Procedure, 1908, is directed against the judgment and order dated 25.11.2002, in Civil Appeal No. 26 of 2002, passed by Shri S.C. Dixit, the then learned District Judge, Haridwar, whereby dismissal of original suit No. 426 of 1997 by the trial court, is upheld.

2) The factual matrix of the case are that a suit was filed by plaintiff-appellant for cancellation of agreement of sale dated 07.08.1995 and sale deed dated 27.08.1996, both executed in favour of the defendant-respondent. It was pleaded in the plaint that plaintiff is the bhumidhar in possession of the land in suit situated in village Salempur, District Haridwar, and consolidation proceedings were on in the village. Taking

Advantage of the simplicity of plaintiff, the defendant cleverly, after making the plaintiff intoxicated, got signed certain papers on 07.08.1995 and also took the plaintiff to the office of the Sub Registrar where neither the document was read over to the plaintiff nor any consideration was paid but his signatures were obtained. Again on 27.08.1996, a fraud was allegedly played on the plaintiff by getting signed papers in the office of the Sub Registrar, Haridwar. The defendant on the basis of aforesaid document got mutated his name in the revenue records through Consolidation authorities. The defendant contested the suit and denied the allegations in the plaint. It was pleaded in the written statement by the defendant that no fraud was committed with the plaintiff nor he was intoxicated. Rather, he was paid amount of Rs. 1,50,000/- per bigha for transfer of the land to the defendant. It is also pleaded by the defendant that instruments in question dated 07.08.1995 and 27.08.1996 were executed by the plaintiff at his own will.

3) Learned trial court framed three issued including the one relating to the fact if the documents in question were liable to be cancelled. Learned trial court while deciding the issue No. 2 relating to the question if the documents are liable to be cancelled, discussing the fact observed that the plaintiff Chandrabhan has admitted that the documents were executed by him and found that the suit is liable to be dismissed, and dismissed it accordingly on 24.03.2001. Aggrieved by said judgment and decree, civil appeal was preferred before the learned District Judge, Haridwar by the plaintiff and same also, after hearing the parties was dismissed by the learned lower appellate court on 25.11.2002, hence this second appeal.

4) I heard learned counsel for the parties and perused the evidence on record.

5) The substantial question of law involved and formulated in the appeal is as under:

> "Whether, the agreement of sale dated 07.08.1995 and the sale deed dated 27.08.1996 were not proved in the eyes of law and whether the learned courts below erred in not giving finding as to the fact if the money was transferred to plaintiff or not?"

Apart from this, one more question of law is to be seen in this appeal, on which also I heard learned counsel of both the parties and that question of law pertains if during the consolidation proceedings, without permission of the concerned authorities, sale deed could not have been executed?

6) Admittedly, the plaintiff was the owner in possession of the land in suit. The signatures in the disputed documents i.e. agreement of sale dated 07.08.1995 and sale deed dated 27.08.1996 are also not denied by the plaintiff-appellant. The dispute relates as to the fact if the fraud was played by intoxicating the plaintiff for getting signed the documents in question. The courts cannot close its eyes to the fact that the documents were registered documents. It is hard to believe if every time the plaintiff was intoxicated and signed the documents on separate dates. Plaintiff should have stated on oath before trial court that the fraud alleged was played on him. In fact, statement of P.W. 1, Chandrabhan (paper No. 43-A in trial court record) shows he did not even stated what he has pleaded in plaint particularly regarding being intoxicated or being kept in dark as to contents of agreement of sale or that of sale deed. As far as, question of law relating to proving of document is concerned since signatures were admitted by the plaintiff himself, as such there was no need of further proof of the execution of document particularly when it was a registered

Document. Learned trial court in its findings on issue No. 2 has clearly mentioned that P.W. 1, Chandrabhan has admitted the execution of the documents. It is a settled principle of law that in the case of cancellation of sale deed, the allegations relating to undue influence or that of fraud are required to be proved like a criminal charge, which the plaintiff has miserably failed to prove before the trial court. As such, neither the trial court nor learned lower appellate court erred in law in dismissing the suit and the appeal. In view of admissions on record that impugned documents stood proved. The substantial question of law is answered accordingly.

7) Learned counsel for the appellant submitted that the compromise paper No. 45-C filed on 22.03.2001 before the trial court was not verified, as such could not have been relied for dismissing the suit. I have gone through the judgment of the learned trial court. The trial court has nowhere relied on compromise while giving its findings. In said paper No. 45-C, plaintiff has admitted that he did execute the documents in dispute. It appears from the record that soon after the compromise was filed by the parties on 22.03.2001, the learned trial court recorded the statement of P.W. 1, Chandrabhan (plaintiff) on same day and passed the judgment on merits on 24.03.2001 dismissing the suit. Perusal of the lower court record shows that apart from aforesaid compromise, the plaintiff filed an affidavit dated 02.04.1998 before the trial court, which is paper No. 19-C in which he has admitted that he did receive the full consideration and executed the documents in question dated 07.08.1995 and 27.08.1996 with full consciousness. Learned lower appellate court has relied this document and committed no error of law in confirming the decree passed by the learned trial court.

8) Lastly, it is argued on behalf of the appellant that no permission of consolidation authorities was obtained prior to the execution of the sale deed, as such the learned courts below have erred in law by dismissing the suit and appeal. Learned counsel failed to sow me the provisions of law in U.P. Consolidation of Holdings Act, 1953 by which the permission of the consolidation authorities was necessary after the year 1991 before transfer of the land. In fact, the bar to transfer a land during consolidation operations was contained in sub Clause (ii) of Clause (C) of sub Section (1) of Section 5 of the U.P. Consolidation of Holdings Act, 1953. However, said provision was repealed and omitted vide U.P. Land Laws (Amendment) Act, 1991 (U.P. Act 30 of 1991). Therefore, there is no substance in the argument advanced on behalf of the appellant that the permission of the consolidation authorities was required before transfer of land, as the impugned documents are of the year 1995 and 1996.

9) In view of above discussion, this Court is of the opinion that impugned judgments and decree need no interference and the second appeal is liable to be dismissed. Accordingly, the appeal is dismissed. No order as to costs.

(Prafulla C. Pant, J.)

Dt.: 17th December, 2004
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